

EASEMENT

THIS EASEMENT, dated this _____ day of _____, 2007, PENMAIN HEAD, LLC, whose address is PO Box 310 577 Mulberry St. Suite 110 Macon, Georgia 31202-0310, hereinafter called "Grantor," to the STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, whose address is 1625 Eleventh Avenue, Helena, Montana 59620-1601, and its successors and assigns, hereinafter called "Grantee,"

WITNESSETH:

Grantor, for and in consideration of an exchange of reciprocal rights-of-way, formally known as the Penmain Head LLC Reciprocal Access Agreement, dated the ____th day of _____, 2007, and recorded in the records books of Powell County, Montana, Book ____, Page ____ along with \$1.00 and other valuable consideration received by Grantor, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Grantee and its successors and assigns, subject to existing easements and valid rights, a permanent non-exclusive easement for the construction, reconstruction, use and maintenance of a road or road segment for ingress and egress for all lawful purposes generally to all lands owned, administered or controlled by the Grantee at the time of this grant and more specifically described below, over and across the following described lands located in Powell County, Montana:

A tract or strip of land sixty (60) feet wide, thirty (30) feet on each side of a centerline, over and across each of the following described property:

Garrison-Mead Block:

Township 9 North, Range 9 West, P.M.M.

<u>Segment</u>	<u>Section</u>	<u>Subdivision</u>
C-D	9	SE4SW4
D-E-F	9	SE4SW4, NE4SW4, NW4SW4, SW4NW4
	8	SE4NE4, NE4NE4, NW4NE4
	5	SE4SW4, SW4SW4, NW4SW4, SW4NW4, NW4NW4
	6	NE4NE4

Township 10 North, Range 9 West

<u>Segment</u>	<u>Section</u>	<u>Subdivision</u>
	31	SE4SE4, NE4SE4, SE4NE4, SW4NE4, NW4NE4, SE4NW4, SW4

Brock Creek Block:

Township 11 North, Range 10 West, P.M.M.

<u>Segment</u>	<u>Section</u>	<u>Subdivision</u>
A-B	35	NE4NE4
B-D	35	NE4NE4
C-D	35	NE4NE4
C-E	35	NE4NE4
B-F	35	NE4NE4, SE4NE4
G-H	35	SE4SW4

If the road is located substantially as described herein, the centerline of the road as constructed is hereby deemed accepted by the Grantor and Grantee as the true centerline of the premises granted. If any subsequent survey of the actual roadway shows that any portion of the road, although located substantially as described, crosses and encumbers lands of the Grantor not described herein, this Easement shall be amended and corrected by mutual agreement of the Grantor and Grantee and payment of full market value for the additional net area (if any) included in and encumbered by such the right-of-way. Upon such agreement and payment (if any), Grantor shall issue a correction deed describing the actual location of this Easement and right-of-way. If any lands described herein are not traversed by the road as constructed, the easement traversing the same shall be terminated in the manner hereinafter provided.

The easement described herein is located approximately as shown on Exhibit A, attached hereto and made a part hereof.

The above grants and conveyances are subject to all matters of public record as of the date of this easement.

The parties hereto hereby agree that the rights hereinabove granted shall be subject to the following terms, provisions, and conditions applicable to Grantee, and its successors and assigns:

1. **Purpose.** The easements and rights-of-way conveyed herein are for the purposes of constructing, reconstructing, maintaining, repairing, and using a road or road segment for ingress and egress and for all lawful purposes generally to lands owned, administered or controlled by the Grantee, hereinafter called "road," over and upon said easement and right-of-way. Those lands being accessed by the Grantee, including motorized access rights for the public, are more specifically described as follows: Section 36 Township 10 North, Range 10 West; NE ¼ of Section 2 Township 9 North Range 10 West; Section 36, Township 11 North Range 10 West P.M.M., Powell County, Montana.

2. **Width, Relocation.** The easement granted herein shall be 60 feet wide, 30 feet on each side of the centerline, with such additional width as required for accommodation and protection of cuts and fills. Additional width must be approved by the Grantor. If the road as presently located or as later constructed is located substantially as described herein, the centerline of said road is hereby deemed accepted by Grantor and Grantee as the true centerline of the premises granted. If any subsequent survey of the actual roadway shows that any portion of the road, although located substantially as described, crosses and encumbers lands of the Grantor not described herein, this Easement shall be amended and corrected by mutual agreement of the Grantor and Grantee and by payment of full market value for the additional net area (if any) included in and encumbered by such right-of-way. Upon such agreement and payment (if any), Grantor shall issue a correction deed describing the actual location of this Easement and right-of-way. If any lands described herein are not traversed by the road as constructed, the easement traversing the same shall be terminated in the manner hereinafter provided. Grantor reserves unto itself, its successors and assigns the right at its expense to relocate said road subject to the condition that, except for distance and curvature, such relocated roadway provides the same type and quality of unpaved roadway as may be established and maintained by Grantee at the time of such relocation.

3. **Third Parties.** Grantor may grant to third parties, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such third party shall be subject to the terms and conditions of this easement and shall not unreasonably interfere with the rights granted hereunder.

4. **Right-of-Way Timber.** Grantor reserves to itself all timber now on or hereafter growing within said right-of-way. Grantee shall have the right to cut timber upon the premises to the extent necessary for constructing, reconstructing, and maintaining the road. Timber so cut shall, unless otherwise agreed to, be cut into logs of lengths specified by Grantor and decked along the road for disposal by Grantor.

5. **Noxious Weeds.**

(a) Grantee shall be responsible for controlling noxious weeds introduced by Grantee's activity on Grantor's land. The Grantee's methods of control must be reviewed by the Grantor's Area Field Office that has jurisdiction for that locale. If the Grantee fails to perform weed control commensurate with the Grantee's activities, the Grantor reserves the right to assess fees necessary for weed control.

(b) Grantee shall comply with the Montana County Noxious Weed Management Act, Section 7-22-2101 MCA et. seq., as follows: Grantee shall notify the local weed board that is responsible for that geographical area that the project is located in. If Grantee disturbs vegetation for any reason, Grantee shall be required to revegetate the disturbed area. Grantee shall submit to the local weed board a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding, fertilization, recommended plant species, use of weed-free seed, and the weed management procedures to be used. This plan is subject to approval by the local weed board, and therefore must be signed by the chairman of the board. Upon termination of this easement, the Grantee shall reclaim the entire area in accordance with this paragraph.

6. **No Interference.** This Easement is granted under the express condition that the Grantee's exercise of the rights herein granted shall not interfere with the Grantor's use of the adjacent land. Grantee shall not interfere with the Grantor and its successors, assigns, lessees or other parties authorized to use Grantor's lands, in such parties' right at all times to use all or any portion of the road, to go upon, cross and recross the land covered by said right-of-way and any road thereon, at any point, for any and all purposes in a manner that will not interfere with the rights granted to the Grantee.

7. **Road Construction, Reconstruction, Inspection and Acceptance.**

(a). All construction or reconstruction of the road by the Grantee shall be in accordance with specifications and written stipulations approved by the Grantor prior to beginning such construction or reconstruction. Approval of any such construction and/or reconstruction shall not be unreasonably withheld by Grantor. Unless the parties hereto agree in writing to share the cost of construction or reconstruction to said road(s) in advance of such construction or reconstruction being made, said construction or reconstruction shall be the sole financial responsibility of the improver. Use of the roads by the Grantor, Grantee and third parties shall be suspended if reasonably necessary until such construction and/or reconstruction has been mutually agreed upon and fully performed.

(b). The parties agree that written acceptance of road work by both parties is essential to the accomplishment of any construction or reconstruction as a part of this Right-of-Way Deed. Each party shall keep the other informed of the construction progress, and the other shall make periodic inspections as deemed necessary and shall immediately raise, in writing, any objections to the work performed. Right-of-way timber must be disposed of as provided herein or as otherwise agreed in writing.

(c). Ten days prior to the expected completion of any construction, the constructing party shall give written notice as to the completion date of a project, and the other party shall, within 15 days after receipt of the notice, make a final inspection and give written notice of acceptance or rejection of the project. If weather or other conditions prevent inspection within this 15-day period, the time during which such conditions prevail will be excluded in determining the 15-day period.

(d). Rejection may only be based upon failure to comply with the stated plans and specifications. A rejection notice must identify the items of work necessary to complete the project in accordance with the stated plans and specifications. Acceptance must not be unreasonably withheld. In case of rejection, the constructing party shall promptly complete the items of work identified in the rejection notice and again give notice of completion as provided above in this section.

8. **Maintenance Costs.**

(a) The cost of road maintenance and resurfacing shall be allocated on the basis of respective uses of said road. When any party uses said road, or a portion thereof, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of the maintenance, resurfacing occasioned by such use as hereinafter provided. During periods when said road, or a portion thereof, is being used solely by one party, such party shall maintain that portion of said road so used to the standards existing at the time use is commenced. Any maintenance performed by the Grantee shall be authorized by and shall be performed in accordance with current Best Management Practices (BMP), laws and regulations within an approved maintenance plan.

(b) During periods when more than one party is using said road, or a portion thereof, each party's share of maintenance and resurfacing shall be pro rata in proportion to its use thereof. The parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

(i) The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed, at a reasonable and agreed upon rate, the maintenance and resurfacing of the road or portion thereof being used; and

(ii) A method of payment by which each party using said road or a portion thereof shall pay its pro rata share of the cost incurred by said maintainer in maintaining and resurfacing said road or portion thereof.

(c) Prior to use of the roads described herein, Grantor and Grantee shall identify any such roads that do not comply with current BMPs, laws and regulations. Grantor and Grantee will negotiate and mutually develop a written "condition and use plan." Costs of reconstruction, repair and restoration will be shared by the Grantor and Grantee based on proportionate use of the road, as provided herein. If either party uses the roads prior to work performed as identified in the condition and use plan that are not in compliance with current BMPs, laws and regulations or fails to pay for its share within 90-days after such work has been completed the easement may be terminated at the option of the other party following not less than 90-day written notice to defaulting party.

(d) If due to exhaustion, deterioration, destruction, severe damage, or for any other reason it becomes necessary to perform substantial reconstruction and repairs to restore a road, bridge, or other facility upon this right-of-way to a condition suitable for all lawful purposes, the necessary work will be performed and each party shall pay its proportionate share of the cost of such work. All reconstruction and repairs shall be in compliance with current BMPs, laws and regulations. If one of the cooperating parties should unreasonably fail to agree to the work to be performed or fails to pay its share within 90-days after such work has been completed, or otherwise fails or refuses to fulfill its obligations, this Easement may be terminated at the option of the other party following not less than 90-day written notice to the defaulting party.

(e) For the purposes of this easement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.

9. **Assignment.** This Easement may not be assigned by Grantee without the prior approval of the Grantor, such approval not to be unreasonably withheld. Evidence of any such assignment must be recorded on forms prescribed by the Grantor. All assignees shall be subject to the provisions of the aforementioned Reciprocal Access Agreement and this easement.

If the easement is assigned in part or there is more than one assignee or the grantee proposes to subdivide and create a tract or tracts of record from property served by this easement, a Road User's Association must be established, the assignment of the easement to the Road Users Association must be amended to include the new tract(s), and a road maintenance plan must be developed by the grantee and submitted for review and approval by the Grantor prior to approval of the assignment by the Grantor. If the grantee proposes to subdivide and create a tract or tracts of record that also requires subdivision approval by a local governing body, the Grantee shall provide notice to the Grantor no less than thirty-(30) days prior to submittal of the subdivision proposal to

the local governing body for consideration. Grantor will not approve an assignment until such time as the local governing body has granted final plat approval. The foregoing notwithstanding, the Grantor's approval of the assignment of this Easement shall not be withheld so long as the Grantee is in compliance with the terms and conditions of this Easement.

Failure to fully comply with any portion of this section shall be considered a material breach of the conditions of this easement and is cause for termination as provided by Section 15(a). All assignees shall be subject to the terms and conditions of this easement.

Unless the conveyance fee is waived by the Land Board, the following language shall be inserted into the easement: A conveyance fee of one percent (1%) of the sales price, or 1% of the fair market value, as determined by the Grantor, shall be paid when: (1) the Grantee or successor in interest sells anything less than its entire interest in the tract or tracts of record within the tributary area benefited by the easement; or, (2) the Grantee or a successor in interest creates a new tract or tracts of record by subdivision.

Once a tract of record has been created, included in the road users association, and a conveyance fee paid, future conveyance fees will not be required unless the tract of record is further subdivided.

The conveyance fee must be paid at the time of the closing of the sale of an existing tract of record, the creation of a new tract or tracts of record by subdivision or by partial assignment of the easement rights to a third party. In the case of any action by Grantee that alters the legal description of and that increases the burden on those lands benefited by this easement, including but not limited to, a "subdivision," the payment of the conveyance fee shall occur prior to filing a final subdivision plat, certificate of survey or other document(s) that purport to or do alter the legal description of and increase the burden on the property benefited by this easement.

10. **Improvements.** Permission must be obtained in writing from the Grantor prior to the construction or erection of any structures, other than normal road-related signs or non-road improvements, in the right-of-way herein granted.

11. **Removal of Timber.** Grantee, upon notice to the Grantor, shall have the right to cut timber upon the right-of-way to the extent necessary for construction, reconstruction and maintenance of the road. Timber so cut shall, unless otherwise agreed to, be cut into logs of lengths specified by the Grantor and decked along the road for disposal by the Grantor. All timber within the right-of-way described herein, whether currently present or hereafter growing, shall remain the property of the Grantor.

12. **Road Relocation.** Grantor reserves the right to relocate the road described herein to the extent necessary to accommodate the needs of the Grantor and in consideration of the Grantee's rights contained herein. It is agreed that the centerline of this Easement shall shift to follow the centerline of the relocated road and shall be accepted as the true centerline of the easement granted. The Grantor will provide Grantee with a corrected deed.

13. **Indemnification.** To the extent of its liability pursuant to applicable law, Grantee shall hold harmless, indemnify and defend Grantor for injury or damage to any person or property incidental to or that may arise during and in consequence of the Grantee's exercise of its rights granted hereunder, including but not limited to the use, operation and maintenance of the easement and right-of-way.

14. **No Representation.** Grantor has made no representation as to the present or future conditions of the easement and right-of-way, and Grantee assumes the risk of damage to the property or an injury to Grantee's person or property, in connection with the exercise of or rights granted hereunder.

15. **Termination.**

(a) Grantor may terminate this right-of-way for a material breach of any of the

conditions or provisions of this deed. Before termination, Grantor shall provide Grantee or its successors or assigns written notice, served at its last known post-office address, of Grantor's intent to terminate this right-of-way, which notice shall set forth the asserted default(s), and shall afford Grantee or its assigns 30 days to request a hearing from Grantor to contest the termination. Termination may not occur if Grantee either cures the asserted default(s) or commences a good faith effort to cure the asserted default(s) within 30 days of Grantor's written notice.

(b) If Grantee determines that the road, or any segment thereof, is no longer needed, the easement traversed thereby shall terminate. The termination shall be evidenced by a statement in recordable form furnished by Grantee to the Grantor or its successor(s) or assign(s) in interest. If Grantor determines that Grantee has ceased to use the easement and right-of-way granted herein for the purpose for which this Easement was granted, Grantor shall provide Grantee or its assigns written notice of this determination at Grantee's or its assign's last known post-office address, and shall provide Grantee or its assigns 40 days to request a hearing from Grantor to contest this determination.

(c) If this Easement is terminated pursuant to Section 15(a) or 15(b) hereof, the parties shall execute and record a Termination of Easement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

GRANTOR:

Penmain Head LLC

Attest:

Signature: _____

Printed Name: _____

ACKNOWLEDGEMENT

STATE OF _____)

)ss

COUNTY OF _____)

On this ____ day of _____, 2007, before me personally appeared _____, to me known to be the _____, of Penmain Head, LLC, the limited partnership that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited partnership for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the limited partnership and that the seal affixed is the seal of said limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the deal and year last above written.

Notary Public in and for the
State of _____

Printed Name

Residing at _____
My Commission Expires _____, 200__

Accepted and Approved:

STATE OF MONTANA
Department of Natural Resources and Conservation

By: _____
Name:
Title:

Date: _____

Right-of-Way Application No. ____
Affecting 60-foot strip of land in
Section 16, Twp.9 North, Rge.9 West
Powell County, Montana.

EASEMENT NO. _____

RIGHT-OF-WAY DEED
=====

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Know ye that the State of Montana (hereinafter referred to as “Grantor”), in consideration of reciprocal rights-of-way, the sum of One Dollar (\$1.00) and other valuable consideration now paid through the Penmain Head LLC Reciprocal Access Agreement, dated the ____th day of _____, 2007, and recorded in the records books of Powell County, Montana, Book ___, Page ___, grants to Penmain Head, LLC, whose address is PO Box 310, 577 Mulberry St. Suite 110 Macon , Georgia 31202-0310 (Hereinafter referred to as “Grantee”), its successors and assigns, and subject to and limited by the further provisions and conditions contained herein, a right-of-way for perpetual non-exclusive easement (the "Easement") for the purpose of constructing, reconstructing, maintaining, repairing, and using a road or road segment for all lawful purposes, (including utilities) upon and across state lands as follows:

A 60-foot strip of land upon and across the following described lands in Powell County, Montana, Principal Meridian Montana, as shown on Exhibit A, attached hereto and made a part hereof:

E1/2 NW1/4 Section 16 Township 9 North, Range 9 West, P.M.M.

The above-described right-of-way contains a total of **7.49** acres, more or less.

1. **Purpose.** The easement and right-of-way granted herein is for the full use of the above-described property as a road by the Grantee, together with its licensees, permittees, and agents, generally to lands owned, administered, or controlled by the Grantee within the tributary area at the time of this grant for all lawful purposes subject to reasonable rules and regulations of the State of Montana and Board of Land Commissioners. These lands being accessed are more particularly described as Sections 31, 32, & 33, Township 10 North, Range 9 West; Section 4, 5, & 9, Township 9 North, Range 9 West; E ½ Section 6, Township 9 North, Range 9 West; and the E1/2 and a 40 acre tract in the W1/2 of Section 9, Township 9 North, Range 9 West.

2. **Width; Road Location.** The easement granted herein shall be 60 feet wide, 30 feet on each side of the centerline, with such additional width as required for accommodation and protection of cuts and fills. Additional width must be approved by the Grantor. If the road as presently located or as later constructed is located substantially as described herein, the centerline of said road is hereby deemed accepted by Grantor and Grantee as the true centerline of the premises granted. If any subsequent survey of the actual roadway shows that any portion of the road, although located substantially as described, crosses and encumbers lands of the Grantor not described herein, this Easement shall be amended and corrected by mutual agreement of the Grantor and Grantee and by payment of full market value for the additional net area (if any) included in and encumbered by such right-of-way. Upon such agreement and payment (if any), Grantor shall issue a correction deed describing the actual location of this Easement and right-of-way. If any lands described herein are not traversed by the road as constructed, the easement traversing the same shall be terminated in the manner hereinafter provided. Grantor reserves unto itself, its successors and assigns the right at its expense to relocate said road subject to the condition that, except for distance and curvature, such relocated roadway provides the same type and quality of unpaved roadway as may be established and maintained by Grantee at the time of such relocation.

3. **Extension of Rights.** Grantor alone may extend rights and privileges for use of the road including but not limited to Government departments and agencies, States, and local subdivisions thereof.

4. **Compliance with Laws, Rules and Regulations.** Grantee shall comply with the Montana Antiquities Act, Title 22, Chapter 3, Part 4, MCA. In particular, Sections 22-3-435 and 22-3-801 through 22-3-811. Further, Grantee will comply with such rules or regulations as may be hereafter imposed by the State Board of Land Commissioners to ensure that the environment will be adequately protected and the public health and safety will not be endangered.

5. **Noxious Weeds.**

(a) Grantee shall be responsible for controlling noxious weeds introduced by Grantee's activity on Grantor's land. The Grantee's methods of control must be reviewed by the Grantor's Area Field Office that has jurisdiction for that locale. If the Grantee fails to perform weed control commensurate with the Grantee's activities, the Grantor reserves the right to assess fees necessary for weed control.

(b) Grantee shall comply with the Montana County Noxious Weed Management Act, Section 7-22-2101 MCA et. seq., as follows: Grantee shall notify the local weed board that is responsible for that geographical area that the project is located in. If Grantee disturbs vegetation for any reason, Grantee shall be required to revegetate the disturbed area. Grantee shall submit to the local weed board a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding, fertilization, recommended plant species, use of weed-free seed, and the weed management procedures to be used. This plan is subject to approval by the local weed board, and therefore must be signed by the chairman of the board. Upon termination of this easement, the Grantee shall reclaim the entire area in accordance with this paragraph.

6. **No Interference.** This Easement is granted under the express condition that the Grantee's exercise of the rights herein granted shall not interfere with the Grantor's use of the adjacent land. Grantee shall not interfere with the Grantor and its successors, assigns, lessees or other parties authorized to use Grantor's lands, in such parties' right at all times to use all or any portion of the road, to go upon, cross and recross the land covered by said right-of-way and any road thereon, at any point, for any and all purposes in a manner that will not interfere with the rights granted to the Grantee.

7. **Road Construction, Reconstruction, Inspection and Acceptance.**

(a). All construction or reconstruction of the road by the Grantee shall be in accordance with specifications and written stipulations approved by the Grantor prior to beginning such construction or reconstruction. Approval of any such construction and/or reconstruction shall not be unreasonably withheld by Grantor. Unless the parties hereto agree in

writing to share the cost of construction or reconstruction to said road(s) in advance of such construction or reconstruction being made, said construction or reconstruction shall be the sole financial responsibility of the improver. Use of the roads by the Grantor, Grantee and third parties shall be suspended if reasonably necessary until such construction and/or reconstruction has been mutually agreed upon and fully performed.

(b). The parties agree that written acceptance of road work by both parties is essential to the accomplishment of any construction or reconstruction as a part of this Right-of-Way Deed. Each party shall keep the other informed of the construction progress, and the other shall make periodic inspections as deemed necessary and shall immediately raise, in writing, any objections to the work performed. Right-of-way timber must be disposed of as provided herein or as otherwise agreed in writing.

(c). Ten days prior to the expected completion of any construction, the constructing party shall give written notice as to the completion date of a project, and the other party shall, within 15 days after receipt of the notice, make a final inspection and give written notice of acceptance or rejection of the project. If weather or other conditions prevent inspection within this 15-day period, the time during which such conditions prevail will be excluded in determining the 15-day period.

(d). Rejection may only be based upon failure to comply with the stated plans and specifications. A rejection notice must identify the items of work necessary to complete the project in accordance with the stated plans and specifications. Acceptance must not be unreasonably withheld. In case of rejection, the constructing party shall promptly complete the items of work identified in the rejection notice and again give notice of completion as provided above in this section.

8. **Maintenance Costs.**

(a) The cost of road maintenance and resurfacing shall be allocated on the basis of respective uses of said road. When any party uses said road, or a portion thereof, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of the maintenance, resurfacing occasioned by such use as hereinafter provided. During periods when said road, or a portion thereof, is being used solely by one party, such party shall maintain that portion of said road so used to the standards existing at the time use is commenced. Any maintenance performed by the Grantee shall be authorized by and shall be performed in accordance with current Best Management Practices (BMP), laws and regulations within an approved maintenance plan.

(b) During periods when more than one party is using said road, or a portion thereof, each party's share of maintenance and resurfacing shall be pro rata in proportion to its use thereof. The parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

(i) The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed, at a reasonable and agreed upon rate, the maintenance and resurfacing of the road or portion thereof being used; and

(ii) A method of payment by which each party using said road or a portion thereof shall pay its pro rata share of the cost incurred by said maintainer in maintaining and resurfacing said road or portion thereof.

(c) Prior to use of the roads described herein, Grantor and Grantee shall identify any such roads that do not comply with current BMPs, laws and regulations. Grantor and Grantee will negotiate and mutually develop a written "condition and use plan." Costs of reconstruction, repair and restoration will be shared by the Grantor and Grantee based on proportionate use of the road, as provided herein. If either party uses the roads prior to work performed as identified in the condition and use plan that are not in compliance with current BMPs, laws and regulations or fails to pay for its share within 90-days after such work has been completed the easement may be terminated at the option of the other party following not less than 90-day written notice to defaulting party.

(d) If due to exhaustion, deterioration, destruction, severe damage, or for any other reason it becomes necessary to perform substantial reconstruction and repairs to restore a road, bridge, or other facility upon this right-of-way to a condition suitable for all lawful purposes, the necessary work will be performed and each party shall pay its proportionate share of the cost of such work. All reconstruction and repairs shall be in compliance with current BMPs, laws and regulations. If one of the cooperating parties should unreasonably fail to agree to the work to be performed or fails to pay its share within 90-days after such work has been completed, or otherwise fails or refuses to fulfill its obligations, this Easement may be terminated at the option of the other party following not less than 90-day written notice to the defaulting party.

(e) For the purposes of this easement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.

9. **Assignment.** This Easement may not be assigned by Grantee without the prior approval of the Grantor, such approval not to be unreasonably withheld. Evidence of any such assignment must be recorded on forms prescribed by the Grantor. All assignees shall be subject to the provisions of the aforementioned Reciprocal Access Agreement and this easement.

If the easement is assigned in part or there is more than one assignee or the grantee proposes to subdivide and create a tract or tracts of record from property served by this easement, a Road User's Association must be established, the assignment of the easement to the Road Users Association must be amended to include the new tract(s), and a road maintenance plan must be developed by the grantee and submitted for review and approval by the Grantor prior to approval of the assignment by the Grantor. If the grantee proposes to subdivide and create a tract or tracts of record that also requires subdivision approval by a local governing body, the Grantee shall provide notice to the Grantor no less than thirty-(30) days prior to submittal of the subdivision proposal to the local governing body for consideration. Grantor will not approve an assignment until such time as the local governing body has granted final plat approval. The foregoing notwithstanding, the Grantor's approval of the assignment of this Easement shall not be withheld so long as the Grantee is in compliance with the terms and conditions of this Easement.

Failure to fully comply with any portion of this section shall be considered a material breach of the conditions of this easement and is cause for termination as provided by Section 15(a). All assignees shall be subject to the terms and conditions of this easement.

Unless the conveyance fee is waived by the Land Board, the following language shall be inserted into the easement: A conveyance fee of one percent (1%) of the sales price, or 1% of the fair market value, as determined by the Grantor, shall be paid when: (1) the Grantee or successor in interest sells anything less than its entire interest in the tract or tracts of record within the tributary area benefited by the easement; or, (2) the Grantee or a successor in interest creates a new tract or tracts of record by subdivision.

Once a tract of record has been created, included in the road users association, and a conveyance fee paid, future conveyance fees will not be required unless the tract of record is further subdivided.

The conveyance fee must be paid at the time of the closing of the sale of an existing tract of record, the creation of a new tract or tracts of record by subdivision or by partial assignment of the easement rights to a third party. In the case of any action by Grantee that alters the legal description of and that increases the burden on those lands benefited by this easement, including but not limited to, a "subdivision," the payment of the conveyance fee shall occur prior to filing a final subdivision plat, certificate of survey or other document(s) that purport to or do alter the legal description of and increase the burden on the property benefited by this easement.

10. **Improvements.** Permission must be obtained in writing from the Grantor prior to the construction or erection of any structures, other than normal road-related signs or non-road improvements, in the right-of-way herein granted.

11. **Removal of Timber.** Grantee, upon notice to the Grantor, shall have the right to cut timber upon the right-of-way to the extent necessary for construction, reconstruction and maintenance of the road. Timber so cut shall, unless otherwise agreed to, be cut into logs of lengths specified by the Grantor and decked along the road for disposal by the Grantor. All timber within the right-of-way described herein, whether currently present or hereafter growing, shall remain the property of the Grantor.

12. **Road Relocation.** Grantor reserves the right to relocate the road described herein to the extent necessary to accommodate the needs of the Grantor and in consideration of the Grantee's rights contained herein. It is agreed that the centerline of this Easement shall shift to follow the centerline of the relocated road and shall be accepted as the true centerline of the easement granted. The Grantor will provide Grantee with a corrected deed.

13. **Indemnification.** To the extent of its liability pursuant to applicable law, Grantee shall hold harmless, indemnify and defend Grantor for injury or damage to any person or property incidental to or that may arise during and in consequence of the Grantee's exercise of its rights granted hereunder, including but not limited to the use, operation and maintenance of the easement and right-of-way.

14. **No Representation.** Grantor has made no representation as to the present or future conditions of the easement and right-of-way, and Grantee assumes the risk of damage to the property or an injury to Grantee's person or property, in connection with the exercise of or rights granted hereunder.

15. **Termination.**
(a) Grantor may terminate this right-of-way for a material breach of any of the conditions or provisions of this deed. Before termination, Grantor shall provide Grantee or its successors or assigns written notice, served at its last known post-office address, of Grantor's intent to terminate this right-of-way, which notice shall set forth the asserted default(s), and shall afford Grantee or its assigns 30 days to request a hearing from Grantor to contest the termination. Termination may not occur if Grantee either cures the asserted default(s) or commences a good faith effort to cure the asserted default(s) within 30 days of Grantor's written notice.

(b) If Grantee determines that the road, or any segment thereof, is no longer needed, the easement traversed thereby shall terminate. The termination shall be evidenced by a statement in recordable form furnished by Grantee to the Grantor or its successor(s) or assign(s) in interest. If Grantor determines that Grantee has ceased to use the easement and right-of-way granted herein for the purpose for which this Easement was granted, Grantor shall provide Grantee or its assigns written notice of this determination at Grantee's or its assign's last known post-office address, and shall provide Grantee or its assigns 40 days to request a hearing from Grantor to contest this determination.

(c) If this Easement is terminated pursuant to Section 15(a) or 15(b) hereof, the parties shall execute and record a Termination of Easement.

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Director, Department of Natural Resources and Conservation, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this ____ day of _____, A.D. 2007.

.....
Governor of the State of Montana

ATTEST:

.....
Secretary of State

COUNTERSIGNED BY:

.....
Director, Department of Natural
Resources and Conservation

_____ (Grantee)
Accepted and Approved:

By: _____

Its: _____

Name and Title of Officer

Attest: (Seal)

Name and Title of Individual

AGENDA ITEM

April 16, 2007

RECIPROCAL ACCESS AGREEMENTS SUMMARY

RIGHT-OF-WAY-APPLICATION FILE NO. 14136

I. **Applicant:**

Penmain Head LLC
PO Box 310
577 Mulberry St
Suite 1100
Macon GA 31202-0310

II. **Purpose of Reciprocal Access Agreement:**

Penmain Head LLC (PMH) needs access to its 4,495 acres of land located in the Garrison Fire Station-Mead Creek drainage area. The State has no legal access to Section 36, Township 10 North, Range 10 West and Section 2, Township 9 North, Range 10 West (1/4 Section) in the Garrison-Mead area, nor does the state have legal access to Section 36, Township 11 North, Range 10 West in the Brock Creek drainage. PMH has agreed to grant legal access to State lands in both the Garrison-Mead and Brock Creek areas. In order for both the State and PMH to gain legal access, both parties have agreed to grant perpetual non-exclusive 60-foot wide All Lawful Purpose easements. In addition, the State would gain motorized public access with the PMH grants in the Brock Creek drainage.

III. **Legal Description:**

The State will grant a 60-foot all lawful purpose easement upon and across the following described lands: Section 16, Township 9 North, Range 9 West, P.M.M., Powell County, Montana.

Penmain Head LLC will grant a 60-foot all lawful purpose easements upon and across the following described lands:

Sections 5, 6, 8, and 9, Township 9 North, Range 9 West, P.M.M., Powell County, Montana.

Section 31, Township 10 North, Range 9 West, P.M.M., Powell County, Montana.

Section 35, Township 11 North, Range 10 West, P.M.M., Powell County, Montana.

IV. General Information:

Tributary area, land area, and road miles are summarized as follows:

	State Share	PMH Share	Total
Tributary Area:	1,440 Acres	4,815 Acres	6,255 Acres
Land Area:	7.49 Acres	42.55 Acres	50.04 Acres
Miles of Road:	1.03 Miles	5.85 Miles	6.88 Miles

Land Office: SWLO
Unit Office: Anaconda Unit
County: Powell County
Beneficiary: Common Schools
Lessee Agreement: The lessee, Donald Beck, has signed a settlement of damages form and has requested that two gates be installed at the easement entrance and exits across his lease. PMH and the State will share in the costs of these gates.
Land Classification: Forest/Grazing. This project will provide access to approximately 4 MMBF of merchantable timber.

V. Costs to be Borne by Each Party:

Excess land value and road costs were determined by examining current market information and land sales in Powell County and were negotiated by the State and the Cooperators. The land values and road costs are summarized as follows:

	EXCESS COSTS	
	PMH Owes State	State Owes PMH
Land Value	\$ 6,217	\$ 3,101
Road Costs	\$ 4,337	\$ 13,644
Total Value/Costs	\$ 10,554	\$16,765
Amount Owed*	\$0.00	\$ 6,211.00

An additional \$3,116.00 in land value is due to the Common Schools Beneficiary.

VI. Results of MEPA Analysis:

Fred Staedler completed a checklist Environmental Assessment approving the action. Scoping notices and a request for comments were directed to the proponents, adjacent land owners, Montana Fish Wildlife & Parks, and DNRC hydrologist Jeff Collins, wildlife biologist Mike McGrath and archaeologist Patrick Rennie. No adverse comments were received.

VII. Benefits to State:

1. The Right-of-Way granted and received will be for 60-foot, all lawful purposes to 1,440 acres. This is consistent with department policies and statutes.
2. In addition to motorized public access rights to 640 Trust Acres as a result of this project, both the State and PMH have agreed to pay the 1% conveyance fee as provided by the Reciprocal Access and Easement Exchange policy.

3. This acquisition provides important permanent access to State lands and eliminates the uncertainty of land management opportunities due to lack of access.
4. All lawful purpose access increases current and future management options on State trust land for trust beneficiaries. While the State may choose not to realize these benefits in the short term, the long-term values and options are enhanced as a result of the ability to explore all future land uses and revenue options.
5. This is the most cost effective method of obtaining All Lawful Purposed Access due to the sharing of road construction and maintenance costs on an equitable basis with an adjacent landowner.
6. This Reciprocal Access Agreement is consistent with the Administrative Rules pertaining to transportation planning (36.11.421), which involve planning and coordinating department needs with adjacent landowners.
7. As land values in Powell County continue to escalate and properties are subdivided, the State of Montana's ability to secure access is expected to become more difficult (dealing with multiple owners) and cost prohibitive.

VIII. Recommendation/Action:

After review of the documents, deed, easement, exhibits, and benefits to the State, the Director of the Department of Natural Resources and Conservation recommends approval of the proposed Reciprocal Access Agreement with Penmain Head LLC as discussed in Application Number 14136. This approval includes payments to be made by the Department in the amounts of \$3,116.00 to Common Schools and \$6,211.00 to Penmain Head L.L.C.

Penmain Head LLC RAA
Garrison-Mead Block
Powell County, Montana
T9N, R9W; T10N, R9W; T10N R10W
Exhibit A



Legend

- Roads, other
- Roads, DNRC to Penmain Head LLC
- - - Roads, Penmain Head LLC to DNRC

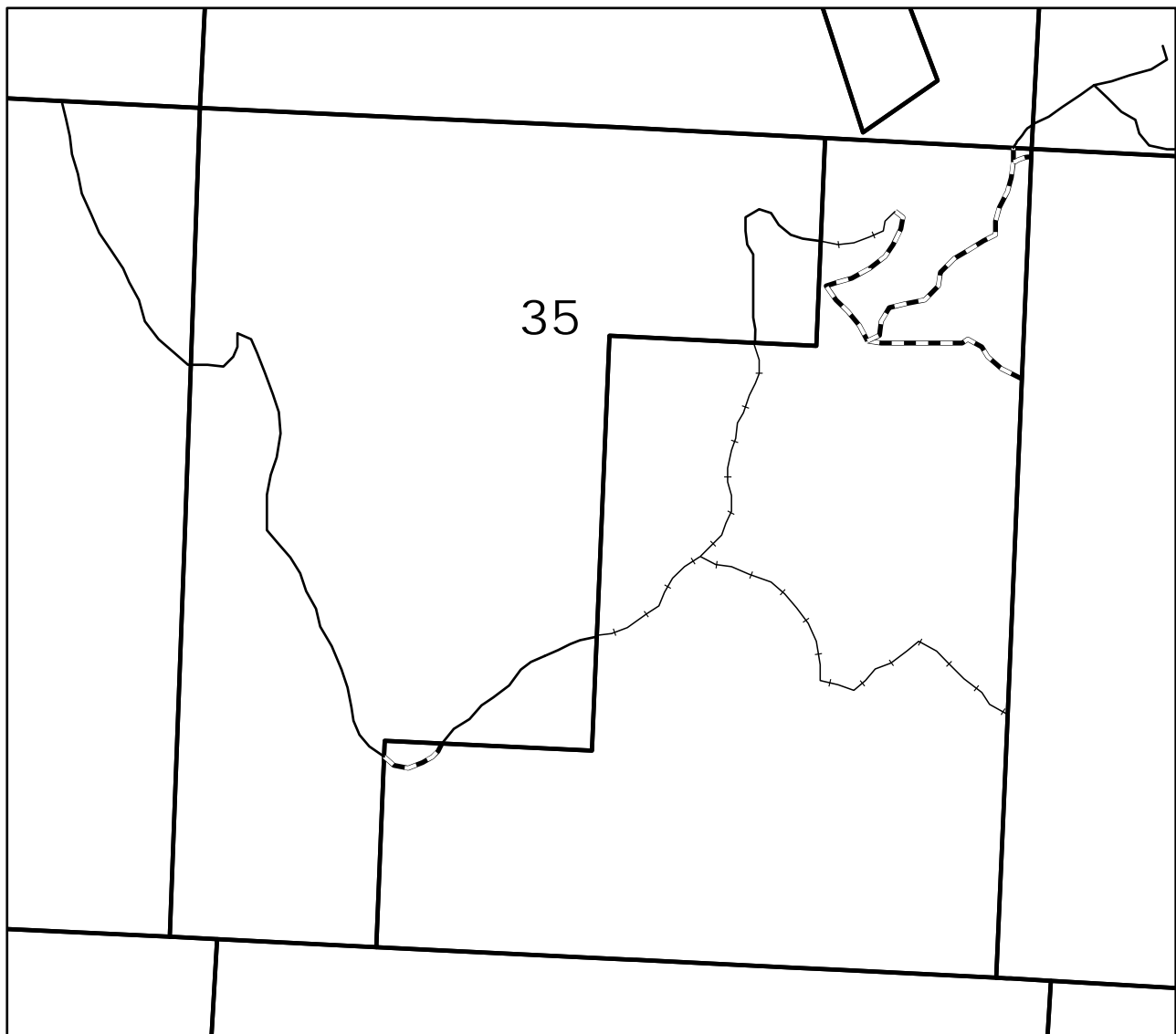
Penmain Head LLC RAA

Brock Creek Block

Powell County, Montana

Section 35, Township 11 North, Range 10 West

Exhibit B



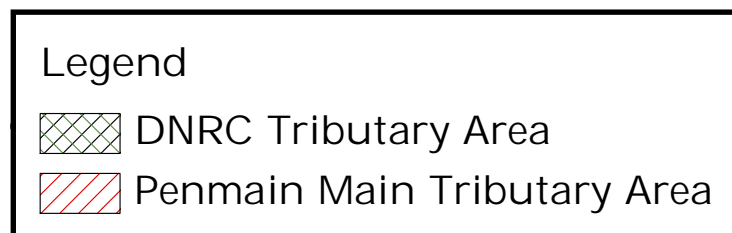
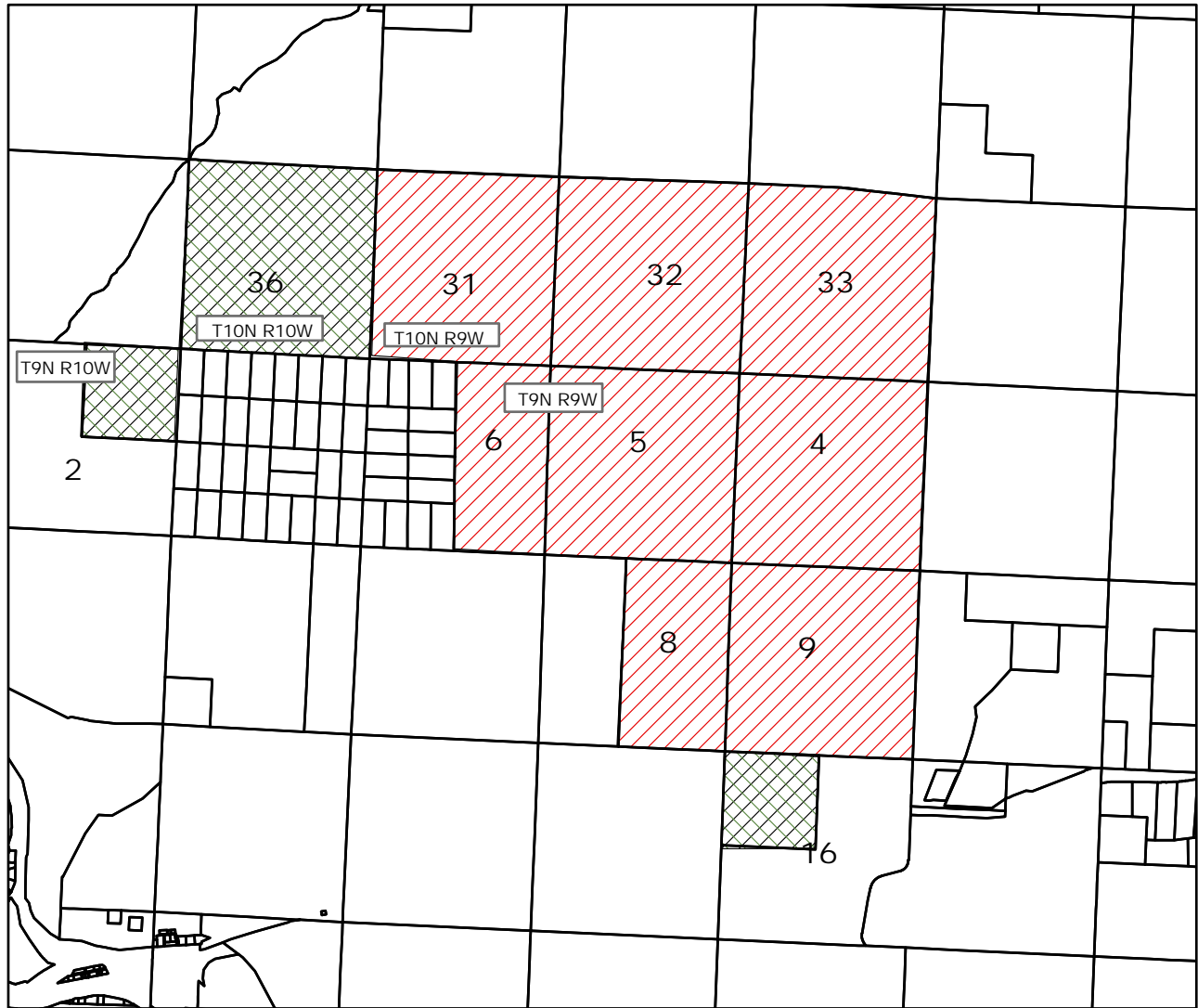
Legend

— Roads, other

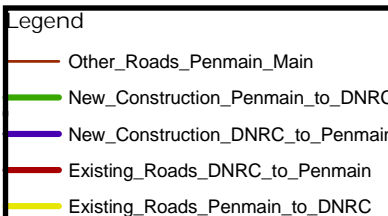
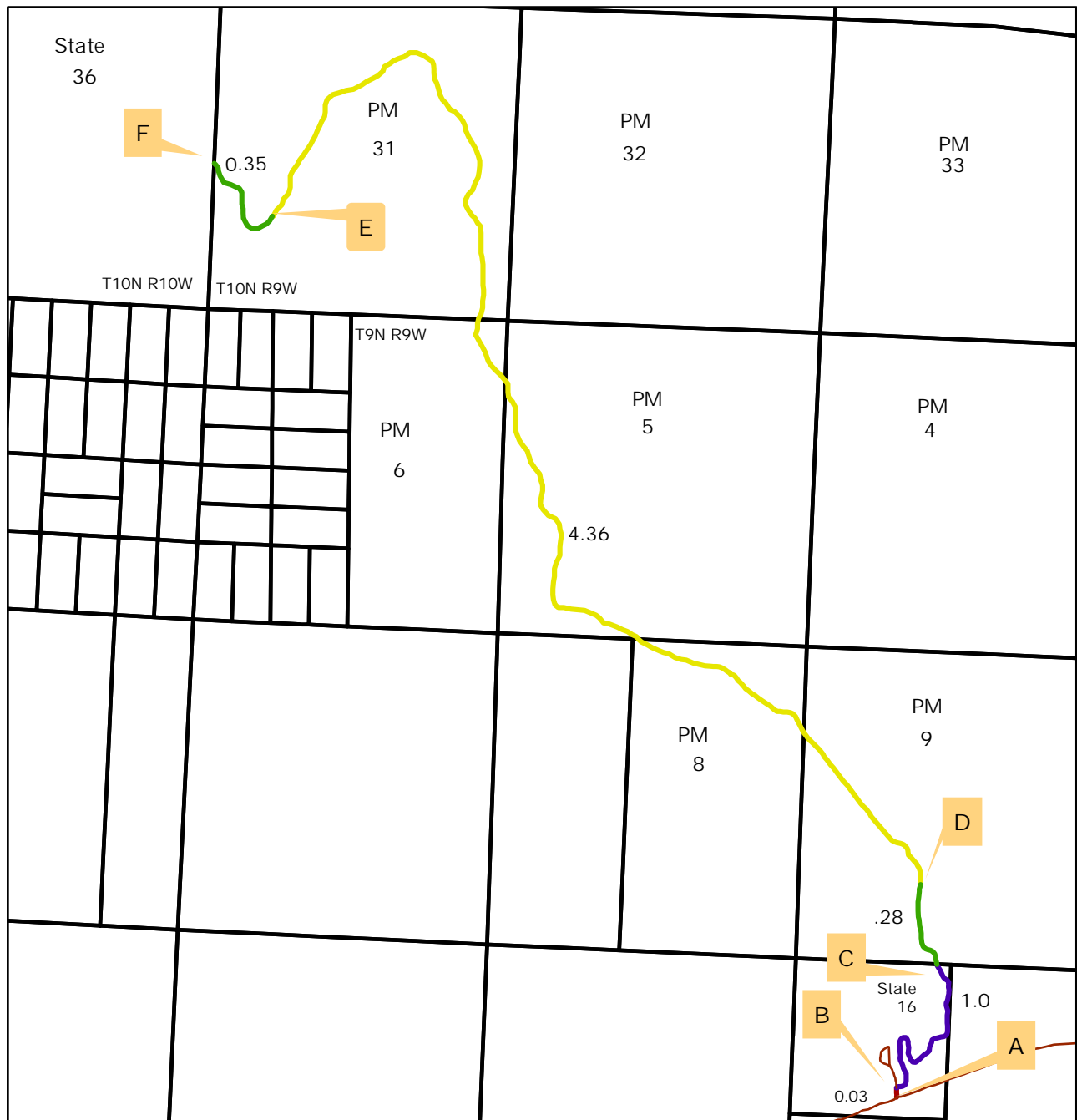
+ + BLM managed roads

- - - Roads, Penmain Head LLC to DNRC

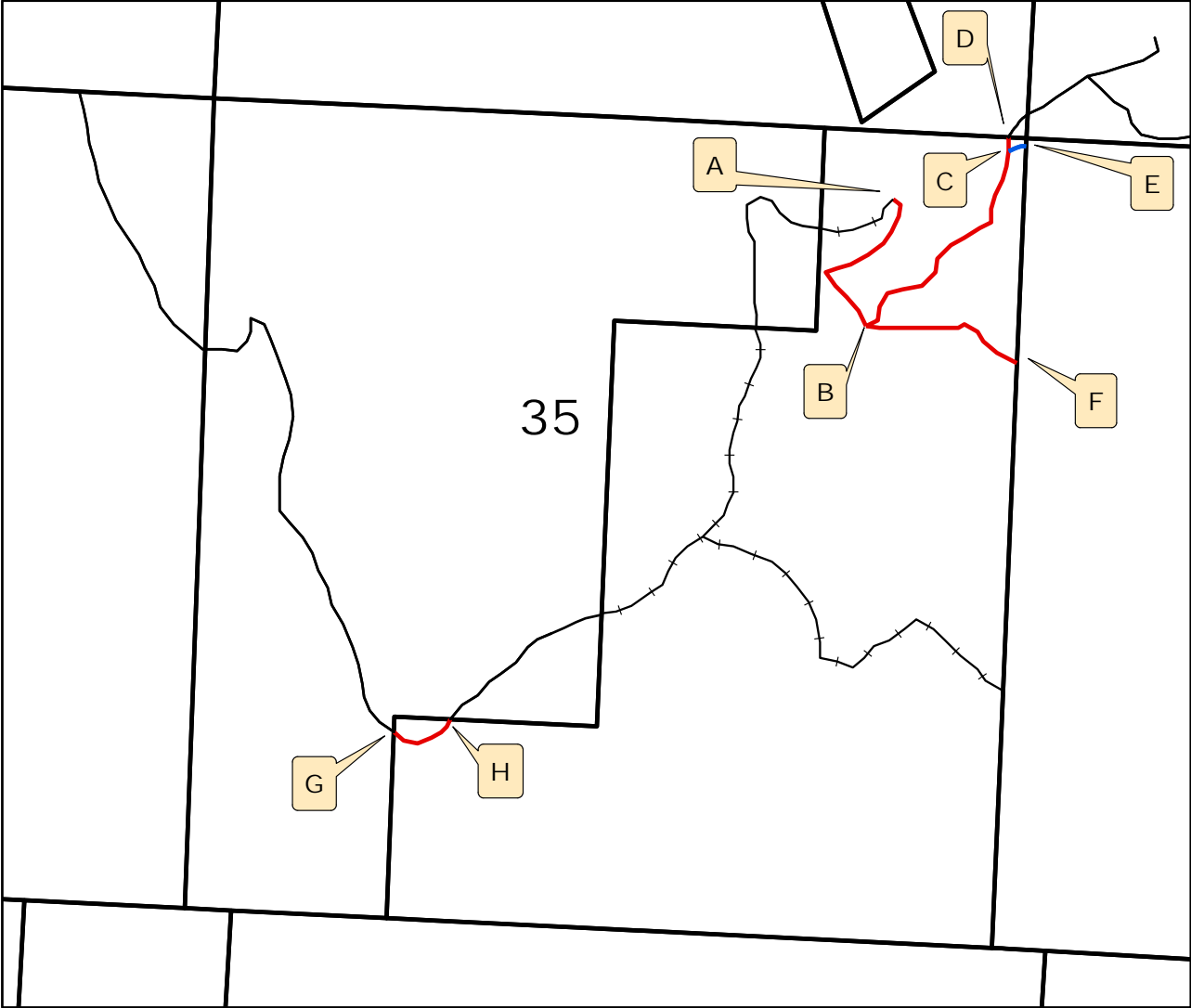
Penmain Head LLC RAA
Garrison-Mead Tributary Area
Powell County, Montana
Exhibit C



Penmain Head LLC RAA
Garrison-Mead Block
Powell County, Montana
T9N, R9W; T10N, R9W; T10N R10W
Exhibit II-C.1



Penmain Head LLC Reciprocal Access Agreement
Brock Creek Block
Powell County, Montana
Section 35, Township 11 North, Range 10 West
Exhibit II-C.2



Legend

- Roads, other
- + + BLM managed roads
- Roads, Penmain Head LLC to DNRC, new construction
- Roads, Penmain Head LLC to DNRC

Penmain Head LLC RAA
Brock Creek Tributary Area
Powell County, Montana
Exhibit D

